

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE SUBJECT PUBLIC WORKS/GATE PASS ASSIGNMENTS	EFFECTIVE DATE 01/01/2002	NUMBER 03.02.121
	SUPERSEDES PD 03.02.121(01/01/01)	
	AUTHORITY MCL 791.265(c); Administrative Rule 791.4415	
	ACA STANDARDS 3-4398	
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POLICY STATEMENT:

The Department shall provide eligible offenders in Correctional Facilities Administration (CFA) institutions, Technical Rule Violation centers (TRVs) and the Special Alternative Incarceration Program facility (SAI) with an opportunity for work assignments outside the security perimeter of the facility as set forth in this policy.

RELATED POLICIES:

05.01.100 Prisoner Program Classification

POLICY:

DEFINITIONS

- A. Gate Pass Assignment - A supervised offender work assignment on Department grounds, but outside the security perimeter of a facility. However, assignments to the Michigan State Industries laundry and meat processing plant in Jackson are not considered gate pass assignments.
- B. Public Works Assignment - A supervised offender work assignment off Department grounds, sponsored by a qualified public or non-profit agency.

GENERAL INFORMATION

- C. For purposes of this policy, "Warden" includes the SAI Administrator unless otherwise stated.

ELIGIBILITY CRITERIA

- D. All SAI prisoners and probationers are eligible for public works and gate pass assignments. Actual placement on the assignment is subject to approval by the SAI Administrator or designee.
- E. Security Level I prisoners housed in facilities approved by the CFA Deputy Director, and prisoners and parolees housed in TRVs, may be classified to a public works or gate pass assignment if they meet all of the following criteria:
 - 1. Not serving for, or have a history of, arson behavior, unless the arson was committed for profit (insurance fraud). However, offenders serving for, or having a history of, arson behavior considered to be a thrill type of offense (pyromania) are not eligible;
 - 2. Not been found guilty of a non-bondable major misconduct which occurred while on any previous public works, work-pass or gate pass assignment, unless approved by the appropriate Deputy Director or designee;
 - 3. Not currently serving on an escape sentence or been found guilty of major misconduct for escape or attempted escape during a sentence for which the prisoner is still serving;
 - 4. If serving for an offense identified as a violent or assaultive offense in Administrative Rule 791.4410(1)(f), including attempt or conspiracy to commit the offense, has served at least one-

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half of the minimum sentence and is within 12 months of the ERD. However, if sentenced as a habitual offender for an offense identified in Administrative Rule 791.4410(1)(I), the prisoner is not eligible;

5. If serving for an offense not identified as a violent or assaultive offense in Administrative Rule 791.4410(1)(I), are within three years of the ERD;
 6. Not serving for, or having a history of, a sexual offense or any offense which involved a sex offense;
 7. Not a very high or potentially very high assaultive risk pursuant to PD 05.01.135 "Statistical Risk Screening";
 8. No pending felony charge or felony or immigration detainer;
 9. No physical/mental condition inconsistent with the demands of the assignment;
 10. No conviction for a felony or misdemeanor which occurred while on a previous public works, work-pass or gate pass assignment;
 11. Not serving a life sentence;
 12. If serving a sentence under the Felony Firearm Law (MCL 750.227b), are within one year of the calendar release date;
 13. No documented objection to placement in the community from a local official or unusual notoriety surrounding the current offense;
 14. Demonstrated a willingness to conform to the rules and regulations of the assignment, as determined by the Warden or Field Operations Administration (FOA) Regional Administrator, or designees;
 15. Meet additional criteria determined by the Warden or FOA Regional Administrator, as appropriate, and set forth in facility operating procedures.
- F. A CFA prisoner need not meet the requirements set forth in numbers 1 through 4 of Paragraph E once a positive parole action is received.
- G. Offenders who meet all applicable criteria set forth above may be denied or delayed assignment by the appropriate Warden or FOA Regional Administrator, or designee, following a review of the overall adjustment and criminal history of the offender.
- H. Offenders shall be tested for substance abuse prior to placement on a gate pass or public works assignment, and while on such assignments, as determined by the CFA or FOA Deputy Director, as appropriate, consistent with PD 03.03.115 "Substance Abuse Programming and Testing". Prisoners and parolees who are found guilty of misconduct for substance abuse, and SAI probationers disciplined in accordance with PD 06.04.105 "Special Alternative Incarceration Program - Probationer" for refusing to be tested or for testing positive, shall not be placed on a gate pass or public works assignment until they test negative. If already on a gate pass or public works assignment, the offender shall be removed from the assignment.

PUBLIC WORKS PROJECTS

Qualified Public Agencies

- I. Qualified public agencies are agencies wholly supported by public funds, whether federal, state, county,

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city, township or village. Department offices and facilities are not considered qualified public agencies for purposes of this policy. Work for public agencies must be performed for the benefit of the general public.

Qualified Private Non-Profit Agencies

- J. Work for private non-profit agencies must serve the public interest or a charitable purpose and shall not result in a competitive disadvantage to a for-profit enterprise. Private non-profit agencies must be exempt from taxation pursuant to the Internal Revenue Code to qualify.
- K. Offenders assigned to public works projects for private non-profit agencies shall not displace agency employees or replace agency employees who are on strike or locked out of work. If a collective bargaining unit agreement is in effect at the proposed work site, the bargaining unit must agree to the assignment of offender labor at the work-site prior to the work beginning.
- L. Each Warden and FOA Regional Administrator that make offenders available for work for private non-profit agencies shall ensure that a seven member Citizen's Advisory Committee (CAC) is established. The CAC shall be comprised of representatives from business, community service and religious organizations, and the president of the local AFL-CIO Central Labor Council or designee. The Community Liaison Committee may be used in this capacity, provided it is comprised of these specially identified representatives. The purpose of the CAC is to provide public input on new proposals for public works projects with private non-profit agencies, prior to offenders being assigned to the project.
- M. Wardens and FOA Regional Administrators shall maintain records of the number of approved public works projects with private non-profit agencies at their respective facilities, the number of offenders assigned, the type of work performed and any problems raised by the CAC. This information shall be reported annually to the appropriate Deputy Director, who shall submit a report detailing this information to both the House and Senate Appropriations Subcommittees on Corrections by May 1 of each year.

Public Works Agreements

- N. All public works projects require approval by the appropriate Warden or FOA Regional Administrator. A representative of the contracting agency must sign a Public Works Agreement (CAJ-177A) before work begins at the public works project. The contracting agency shall pay the Department the per diem set forth in Attachment A for each offender assigned to public works.
- O. Prior to signing an agreement with a private non-profit agency, the appropriate Warden or FOA Regional Administrator shall ensure that the proposed agreement is reviewed by the CAC. Following the signing of the agreement with the agency, a copy of the agreement shall be forwarded to the Director through the appropriate chain of command.
- P. The appropriate Warden or FOA Regional Administrator and the contracting agency have the right to cancel the agreement with 30-day prior written notice if both parties consent, or immediately by the Department for a violation of the supervision standards or other requirements set forth in this policy by the contracting agency. Any suspected criminal activity shall be referred to the Michigan State Police.
- Q. The appropriate Warden or FOA Regional Administrator shall ensure that each work site for approved public works projects is inspected at least monthly to ensure compliance with the public works agreement and applicable Department policies and procedures, including prisoner eligibility and supervision standards. A written report of the inspection shall be provided to the appropriate Warden or FOA Regional Administrator.

SUPERVISION STANDARDS

- R. All offenders on public works and gate pass assignments shall be supervised at a level sufficient to maintain the safety of the offenders, supervisors and members of the public, as determined by the

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appropriate Warden or FOA Regional Administrator. The level of supervision required shall depend upon the specific work site to which the offender will be assigned. Therefore, Wardens and FOA Regional Administrators with public works or gate pass assignments shall ensure that a written assessment of each work site is completed. The assessment shall take into consideration at least the following factors:

1. The type of work to be performed at the work site;
2. The location of the work site (e.g., on facility grounds, in a rural area, urban area, proximity to a public roadway or dwelling);
3. The potential for contact with members of the public on the work site;
4. The number of supervisors on the work site, with not less than one supervisor for each work crew on the site;
5. The number of offenders at the work site;
6. Availability of telephone/radio communications with supervisors on the site;
7. The location of restroom and eating facilities at the work site.

S. Based on the above assessment, the Warden or FOA Regional Administrator shall assign in writing one of the following supervision levels for offenders while on the public works or gate pass assignment:

1. Supervision Level I, which requires direct visual observation of offenders at least every 30 minutes with a maximum of ten offenders on a crew.
2. Supervision Level II, which requires direct visual observation of offenders at least every 15 minutes with a maximum of ten offenders on a crew.
3. Supervision Level III, which requires direct visual observation of offenders at least every ten minutes with a maximum of ten offenders on a crew.
4. Supervision Level IV, which requires offenders to be under direct visual observation at all times with a maximum of eight offenders on a crew except that in SAI a maximum of 15 offenders may be placed on a gate pass assignment.

T. The Warden or FOA Regional Administrator shall determine the appropriate supervision level prior to offenders beginning work at the work site. Work crew supervisors shall report any change at the work site which may impact on the required supervision level (e.g., change in the degree of public contact), to the appropriate Warden or FOA Regional Administrator to determine whether the supervision level should be changed.

U. All offenders assigned to public works and gate pass assignments shall be supervised by Department employees, except that employees of the contracting agency may supervise public work crews if approved by the appropriate Warden or FOA Regional Administrator. However, prisoners serving sentences subject to disciplinary time shall be supervised only by Department employees. Contracting agencies providing supervision for public works crews shall be required to comply with the supervision standards established by the Warden or FOA Regional Administration pursuant to Paragraph S. Employees of an agency who will be supervising a crew shall be required to successfully complete the Department's Outside Agency Supervisors Training Program. They also shall be required to follow all Department standards detailed in the Program.

V. Contracting agencies providing supervision for public works crews shall ensure that:

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1. Work crew supervisors, excluding law enforcement officers, do not carry or transport weapons of any kind while supervising offenders;
2. Work crew supervisors comply with all facility security requirements, including supervision standards;
3. Work crew supervisors supervise only one crew at a time; and
4. Work crew supervisors comply with and enforce applicable required State and Federal safety standards.

CLASSIFICATION TO AND TERMINATION FROM PUBLIC WORKS/GATE PASS ASSIGNMENTS

- W. CFA prisoners shall be classified to public works and gate pass assignments, their performance evaluated and, if necessary, their assignment terminated as set forth in PD 05.01.100 "Prisoner Program Classification", consistent with this policy. SAI and TRV offenders shall be classified, their performance evaluated and, if necessary, their assignment terminated pursuant to procedures developed by the FOA Deputy Director or designee, consistent with this policy.

OFFENDER WAGES

- X. TRV offenders on gate pass assignments and SAI offenders on public works and gate pass assignments shall not be paid for the assignment. CFA prisoners on gate pass assignment shall be paid in accordance with PD 05.02.110 "Prisoner Work and School Pay Scales". CFA prisoners and TRV offenders on public works assignment shall be paid for actual days worked as set forth in Attachment A.

OPERATING PROCEDURES

- Y. The FOA Deputy Director and Wardens shall ensure that procedures necessary to implement this policy directive are developed consistent with the requirements in the policy directive within 60 calendar days after its effective date.

AUDIT ELEMENTS

- Z. A Primary Audit Elements List has been developed and will be provided to Wardens, FOA Regional Administrators and the SAI Administrator to assist with self audit of this policy, pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

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ATTACHMENT A

- A. Each contracting agency shall pay a per diem for each offender assigned to a public works assignment with that agency as set forth below:

If supervised by Department staff:

1. \$15.00 per day worked if on an eight hour, five day per week assignment.
2. \$18.75 per day worked if on a ten hour, four day per week assignment.

If supervised by non-Department staff:

1. \$14.00 per day worked if on an eight hour, five day per week assignment.
2. \$17.50 per day worked if on a ten hour, four day per week assignment.

- B. CFA and TRV offenders classified to a public works assignment shall receive the following pay for each day worked:

1. \$2.50 per day based on an eight hour day, five day per week assignment.
2. \$3.13 per day based on a ten hour, four day per week assignment.

- C. Any per diem paid pursuant to Paragraph A above which exceeds the amount paid to the offender pursuant to Paragraph B shall be placed in the individual facility's account.